United Nations A/58/534

General Assembly

Distr.: General
24 October 2003
English
Original: French

Fifty-eighth session
Item 117 (c) of the agenda
Human rights questions: human rights situations and reports of special rapporteurs and representatives

Interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo, prepared by the Special Rapporteur of the Commission on Human Rights, Professor Iulia Motoc (Romania), pursuant to General Assembly resolution 57/233 and resolution 2003/15 of the Commission on Human Rights.

* Transmitted late because of the Special Rapporteur's recent mission and in order to include additional information.

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Summary

The Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo submits this report pursuant to General Assembly resolution 57/233 and resolution 2003/15 of the Commission on Human Rights. It is based on the information regularly transmitted to her by the human rights field office in the Democratic Republic of the Congo, representatives of institutions, churches, non-governmental organizations (NGO), political parties and various associations and on the information compiled during her recent visit.

Political developments

Considerable progress has been made at the political level in the Democratic Republic of the Congo in recent months. The Special Rapporteur appreciated the new Government's mode of operation and the collegial and cooperative spirit found among its members, two months after the establishment of the country's institutions. New citizens' institutions for the promotion and protection of human rights in the Democratic Republic of the Congo, the Congolese Human Rights Monitoring Centre and the Truth and Reconciliation Commission, are being established.

Mass violations of human rights

The situation in the Democratic Republic of the Congo continues to be characterized by mass violations of human rights. All the violations committed reflect the constituent elements, as defined in the Rome Statute of the International Criminal Court (ICC), of the crime of genocide, crimes against humanity and war crimes. Such violations create a frightening picture of one of the most serious human rights situations in the world.

In 2003, the Ituri region was the scene of bloody clashes between the Lendu and Hema and their allies. Despite the conflict's ethnic appearance, its root causes are of an economic nature. Mention should be made of the success of the humanitarian Operation Artemis, led by French troops in Ituri.

It was repeatedly emphasized that the withdrawal of foreign troops should be accompanied by a firm commitment by all the parties not to arm local militias.

The security situation in North Kivu and South Kivu remains extremely worrying. It is characterized by clashes between troops of the Congolese Rally for Democracy (RCD-Goma) and Mai-Mai combatants, the troops of the Forces for Defence of Democracy (FDD) and the Interahamwe.

The Special Rapporteur is of the view that lasting reconciliation and peace can be brought about only through an end to impunity.

The Special Rapporteur welcomes the decision of the Prosecutor of the International Criminal Court to make the Democratic Republic of the Congo the first State to be the subject of his investigations.

The Special Rapporteur remains convinced that a judicial mechanism should be established to inquire into all human rights violations committed before July 2002. To that end, the commission of inquiry or of experts proposed by the late High Commissioner for Human Rights, Sergio Vieira de Mello and several NGOs and endorsed by the Commission on Human Rights should be established.

The Special Rapporteur has confidence in the reconciliation process in the Democratic Republic of the Congo. She notes that although the country has been scarred by atrocities, it possesses exceptional moral resources, determination and personalities. She favours local reconciliation solutions, coming from people familiar with the traditions and customs of the areas in question.

Situation of refugees and displaced persons

Displaced persons are estimated at more than 2.7 million. The situation continues to deteriorate owing to population movements caused by the recent events in Ituri and Kivu.

Administration of justice

In this area, the Special Rapporteur learned of abuses committed by bodies responsible for preliminary inquiries in criminal trials, including security and information agents. Conditions of detention are harsh and many irregularities are committed in the country's prisons and detention centres.

Concerning the trials that took place following the mass violations of human rights in Kisangani in May 2002 and in Mambasa in December 2002, the Special Rapporteur notes that the proceedings were not conducted in an independent and impartial manner. They were conducted in such a way as to make it impossible to arrest and punish the guilty parties.

Situation of vulnerable groups

The different armed groups continue to recruit and use children despite appeals and official demobilization campaigns. An international enforcement mechanism appears necessary. Despite the international community's awareness of the extent of the violence against women in the Democratic Republic of the Congo, the Special Rapporteur notes the insufficient means made available to NGOs.

Conclusions and recommendations

The Special Rapporteur asks all the parties to the conflict in the Democratic Republic of the Congo to end their support for the armed groups, respect the rights of women and children and take steps to allow refugees and displaced persons to return.

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I. Introduction

A. Mandate and activities of the Special Rapporteur

1. In its resolution 2003/15, adopted on 17 April 2003, the Commission on Human Rights decided to request the Special Rapporteur on the situation of human rights in the Democratic Republic of the Congo to submit an interim report to the General Assembly at its fifty-eighth session and to report to the Commission at its sixtieth session on the situation of human rights in the Democratic Republic of the Congo.

2. The Commission on Human Rights also decided to request the Secretary-General to give the Special Rapporteur all necessary assistance to enable her to discharge her mandate fully.

3. This report is submitted pursuant to the above-mentioned resolution. It is based on the information regularly transmitted to the Special Rapporteur by the Human Rights Field Office in the Democratic Republic of the Congo, representatives of institutions, churches, non-governmental organizations (NGOs), political parties and associations and on the information compiled during her recent visit. The report covers information received up until 4 October 2003.

4. During her visit to Geneva, from 23 to 27 June 2003, as part of the annual meeting of rapporteurs, special representatives, independent experts and chairpersons of working groups, the Special Rapporteur met with members of the diplomatic corps and with officials of the Human Rights Field Office in the Democratic Republic of the Congo.

5. The Special Rapporteur went to the Democratic Republic of the Congo for the second time from 26 February to 10 March 2003. While in Kinshasa she held discussions with the highest State authorities, notably President Joseph Kabila, the Minister for Foreign Affairs, the Minister of Human Rights and the Minister of Justice. She met the Special Representative of the Secretary-General and his deputy, members of the diplomatic corps and the heads of various United Nations agencies. She met on several occasions with the representatives of civil society in Kinshasa and the Ituri region. She also met with representatives of political parties and visited the Kinshasa Penal and Rehabilitation Centre.

6. The Special Rapporteur travelled to Goma, where she met senior members of the Congolese Rally for Democracy (RCD), and to Kisangani where she met the RCD provincial officials. In Goma and Kisangani, she met civil society representatives from the provinces of North Kivu and South Kivu and from Eastern Province. In Kisangani, she met relatives of the victims of massacres in May 2002 and victims of sexual violations; she also visited the prison and police cells. Because of security conditions she was not able to go to Bunia or Gbadolite.

7. The Special Rapporteur went to the Democratic Republic of the Congo for the third time from 26 August to 6 September 2003. In the course of her visit to Kinshasa, she met with the highest State officials, notably the Vice-President in charge of the Political Commission, the Presidents of the National Assembly and the Senate, the Minister for Foreign Affairs, the Minister of Justice, the Minister for Human Rights, the Minister for Women and the Family and the military prosecutor of the Congolese Armed Forces (FAC). She met with the Special Representative of

the Secretary-General and his deputy, the members of the diplomatic corps and the heads of various United Nations agencies. She met with members and representatives of Kinshasa civil society. She also met with the representatives of political parties. She visited the Kinshasa Penal and Rehabilitation Centre.

8. The Special Rapporteur went to Kisangani, Bunia and Bukavu. In Kisangani, she met with the provincial authorities of the Congolese Rally for Democracy (RCD), the senior military prosecutor and garrison prosecutor, representatives of United Nations agencies and representatives of international NGOs and human rights associations. In Bunia, she met with the acting administrative authorities of Ituri, the resident administrator in Fataki, representatives of United Nations agencies and representatives of human rights NGOs. She met with female victims of sexual violence and members of the Prevention and Verification Commission. She visited the transit centre for child soldiers, the displaced persons' camp at the airport, the Doctors Without Borders hospital, the courthouse and the prison.

9. In Bukavu, the Special Rapporteur met the Governor and Vice-Governors of South Kivu province, representatives of the human rights section of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), representatives of the press, the President of the Press Union of the Congo and representatives of civil society, human rights NGOs, NGOs working on issues related to rape and sexual violence, the child protection section of MONUC, UNICEF and NGOs working to protect child soldiers and child sorcerers. She met with the representative of the Office of Humanitarian Affairs on the issue of displaced persons. Finally, the Special Rapporteur held individual meetings with victims of human rights violations and visited the Centre Olame.

10. In New York, the Special Rapporteur interviewed senior United Nations officials, members of the diplomatic corps and the Director of the United Nations Development Fund for Women (UNIFEM).

11. The Special Rapporteur transmitted to the Government 10 requests for urgent action, none of which has received a response.

B. Joint mission to investigate allegations of massacres

12. In paragraph 8 (b) of its resolution 57/233, the General Assembly requested the Special Rapporteurs on the situation of human rights in the Democratic Republic of the Congo and on extrajudicial, summary or arbitrary executions and a member of the Working Group on Enforced or Involuntary Disappearances to carry out, as soon as the security conditions permitted and, where appropriate, in cooperation with the National Commission of Inquiry to investigate alleged human rights violations and the breaches of international humanitarian law in the Democratic Republic of the Congo between 1996 and 1997, a joint mission to investigate all massacres carried out on the territory of the Democratic Republic of the Congo with a view to bringing to justice those responsible, and to report to the Commission on Human Rights at its fifty-ninth session and to the General Assembly at its fifty-eighth session. To follow up this request, the Special Rapporteur consulted with the other members of the joint mission, but because of the lack of security in certain parts of the country, the mission could not be undertaken (see note by the Secretary-General A/58/127).

II. Political developments

13. Considerable progress has been made at the political level in the Democratic Republic of the Congo in recent months.

14. On 2 April 2003, the Final Act of the inter-Congolese dialogue was signed in Sun City (South Africa), by which the participants in the political negotiations endorsed a package of agreements that constitute a comprehensive programme for the restoration of peace and national sovereigntv in the Democratic Republic of the Congo.

15. The agreements comprise the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo, signed on 17 December 2002 in Pretoria, the agreement on the Transitional Constitution, adopted in Sun City on 1 April 2003, the memorandum on military and security issues of 6 March 2003, endorsed on 1 April 2003, and the 36 resolutions adopted by the participants in the inter-Congolese dialogue in Sun City in March and August 2002.

16. President Joseph Kabila promulgated the Transitional Constitution on 4 April 2003, following which, the President of the Republic was sworn in before the Supreme Court of Justice on 7 April 2003.

17. Pursuant to article 154 of the Transitional Constitution, five pro-democracy institutions will be established: the Independent Electoral Commission, the Congolese Human Rights Monitoring Centre, the High Authority for the Media, the Truth and Reconciliation Commission, and the Anti-Corruption and Ethics Commissions.

18. The Joint Chiefs of Staff met again on 3 May 2003 to conclude the negotiations initiated in Pretoria on the structure and distribution of posts within the High Command of the integrated Congolese Army. Following the signature by the former combatants of the memorandum on shared responsibilities in the Army, the Transitional Government was established on 30 June 2003.

19. In accordance with the Luanda Agreements signed on 6 September 2002 and the Global and All-Inclusive Agreement signed in Pretoria, the Ituri Pacification Commission, meeting in Bunia in April 2003, adopted a draft interim mechanism for the pacification and provisional administration of Ituri, which included a special interim assembly, an interim executive body, a prevention and verification commission, a committee for coordinating armed groups and an interim human rights monitoring centre.

20. With regard to the economy, the agreement signed in May 2003 establishes the free circulation of goods and persons on the river Congo, the unification of bank money, the harmonization of prices and taxes, the establishment of airlines and the authorization of permits to overfly all national territory.

21. The Special Rapporteur appreciated the new Government's mode of operation and the collegial and cooperative spirit found among its members (who belong to different political parties) two months after the establishment of the transition institutions. She considers that there is a political will to rebuild democracy in the country.

III. Mass violations of human rights

22. Despite the progress made in the peace process in the Democratic Republic of the Congo, violent clashes have occurred in the east of the country, particularly between the Lendu and the Hema militias in Ituri, and between the Rassemblement Congolais pour la Démocratie (RCD-Goma), the Mai-Mai and other armed groups in Kivu. The human rights situation continues to be characterized by mass violations of such rights.

23. Most of the mass violations of human rights are examined in detail in different reports of the United Nations bodies, especially those of the Human Rights Field Office in the Democratic Republic of the Congo and of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC).

A. Legal framework

24. The idea that appears to be emerging is that the mass violations of human rights in the Democratic Republic of the Congo are international crimes, crimes that may be the result of grave and large-scale violations of the obligation to ensure the protection of all human beings, such as the prohibition of slavery, genocide and apartheid.

25. Because of their scope, the human rights violations in the Democratic Republic of the Congo encompass all the violations contained in the articles of the Rome Statute of the International Criminal Court concerning the crime of genocide, crimes against humanity and war crimes. These provisions could provide the legal framework for the violations observed in the country, inasmuch as these violations create a frightening picture of one of the most serious human rights situations in the world.

26. The crime of aggression, which has not yet been defined by the Statute of the International Criminal Court, but falls within its competence, is also of considerable relevance with regard to human rights violations in the Democratic Republic of the Congo.

B. The Ituri region

27. The previous reports of the Special Rapporteur (A/57/437 and E/CN.4/2003/43) mentioned the conflict in Ituri, the bloodiest in the Democratic Republic of the Congo since 1999. Despite the ethnic appearance of the conflict, its root causes are of an economic nature.

28. Ituri is one of the richest regions of the Democratic Republic of the Congo, with gold, diamond, cobalt, timber and oil reserves. Foreign Governments, soldiers and many other actors connected to them want to exploit these resources illegally. The discovery of oil in Semliki, an area located between Uganda and Ituri, already considered a new oilfield of global importance, appears to be once more arousing the greed of the criminals who profit from the conflict in Ituri.

29. In 2003, Ituri was the scene of extremely deadly clashes between the Lendu and the Hema and their allies. During the period from January to March 2003, several massacres followed by the destruction of property were perpetrated by the

Union des patriotes congolais (UPC) in Lendu, Lipri, Zumbe, Bambu and Kobu. More than 300 persons were killed; many people disappeared and a considerable amount of property was looted (see E/CN.4/2003/43).

30. On 6 March 2003, the Ugandan People's Defence Force (UPDF), relying on the support of local Lendu and Ngiti combatants with whom it had created a political platform — the Front pour l'intégration et la paix en Ituri (FIPI) — recaptured the town of Bunia from the UPC after violent clashes. While the UPDF strengthened its military presence in Ituri, the UPC militias withdrew, first to Bule, north of Bunia, then to Blukwa, south of Drodro, to Lake Albert, and then to Drodro. Hence, it was towards Drodro that the two battalions of the Ugandan army were marching when the massacre of 3 April 2003 took place. This massacre had been preceded by massacres at Mandro on 19 March 2003, Nyapala, Gbala, Thatsi, Tchatskpa, Baimani, Rule and Blukwa. Massacres have also been committed in Irumu.

31. The Office of the United Nations High Commissioner for Human Rights/MONUC multidisciplinary special investigation team, which visited the site on 5 April 2003 and the special investigation team, accompanied by forensic experts, sent to Drodro and the surrounding area on 18 April and 5 May 2003, confirmed that there had been massacres of both Lendu and Hema in Ituri. Grave human rights violations had been committed against the civilian population, particularly women, children and the elderly. Large-scale massacres had been perpetrated. Some victims had been executed, others burned alive in their huts or their houses. Women had been abducted, raped, then killed. Whole villages had been destroyed and set fire to. Property had been looted.[1]

32. Pressured by the international community, the Ugandan troops began their withdrawal from Ituri on 25 April 2003. The Ugandans claimed to have intervened to prevent genocide. Several reports have been prepared on the role of Uganda in the continued conflict. It has frequently been emphasized that the withdrawal of troops should be accompanied by a firm commitment by all the parties involved in the conflict not to arm local militias.

33. Notwithstanding the signature, on 16 May 2003, of the Dar-es-Salaam ceasefire agreement between the members of the Ituri Pacification Commission, the Government and the five rebel groups in Ituri, clashes have continued both in Bunia and in Tchomia as well as in other parts of Ituri.

34. The principal militias involved in the conflict in Ituri are: UPC, led by Thomas Lubanga, the Parti pour l'unité et la sauvegarde de l'intégrité du Congo (PUSIC), led by Khawa Mandro, the Forces populaires pour la démocratie au Congo (FPDC), an Alur and Lugbara political party led by Thomas Unen Chen, the Front

[1] Among the survivors, many were mutilated or seriously wounded. The report of the Office of the High Commissioner for Human Rights/MONUC special investigation team noted 408 cases of summary execution, including people burned alive, more than 80 cases of people who were seriously wounded or even mutilated, and about 150 shops and stores looted as well as several dozen head of cattle stolen and carried off by the assailants. The report also mentioned that there were about 20 common graves at Jissa, and that eight of them contained about 140 bodies.

nationaliste et intégratif (FNI), a Lendu political party led by Floribert Njabu Ngabu, the Force de résistance patriotique en Ituri (FRPI), a Ngiti political party led by Dr. Adirodo and the Force armée populaire du Congo (FAPC), led by Commander Jérôme Kakawave Bakonde.

35. On 26 May 2003, on Radio Candip, Thomas Lubanga warned the civilians who had taken refuge in the MONUC headquarters to return to their homes or "[be] considered enemies"; he also threatened to send in "a group of soldiers to remove them". Lubanga's messages and the incitement to ethnic hatred, illustrate the gravity of the human rights situation in Ituri at the end of May 2003.

36. MONUC's action to protect the civilian population has been mostly insufficient. The human rights situation in Bunia, scene of clashes between the troops of Thomas Lubanga's UPC and the Lendu militia, has deteriorated seriously. The civilian population is in danger, hence the increase in the number of people who have fled Ituri. Without effective intervention by the international community, Ituri will be plunged into a bloodbath.

37. In its resolution 1484 (2003) of 30 May 2003, the Security Council, acting under Chapter VII of the Charter of the United Nations, authorized the deployment of an Interim Emergency Multinational Force. The Multinational Force, led by France, was deployed effective 6 June 2003. Well received by the civilian population, it succeeded in considerably improving the security situation in Bunia, particularly around the airport and MONUC headquarters. This was a model of effective humanitarian intervention under Chapter VII of the Charter. However, owing to the limited mandate of the Force, which was supposed to remain confined to Bunia, the mass violations of human rights in Ituri district continued.

38. The Special Rapporteur observed during her visit, which coincided with the end of the mission of the Interim Emergency Multinational Force, that the town of Bunia was divided between the Hema and the Lendu. Over two thirds of the town was controlled by the Hema and the rest by the Lendu. The Lendu were not able to go to areas controlled by the Hema and vice versa.

39. During her mission to Bunia the Special Rapporteur was informed of attacks against the civilian population. On 10 and 11 June 2003, FNI militia attacked Nioka, in the territory of Mahagi. According to information transmitted by NGOs, over 200 people were killed. Others were taken hostage, transported to Rethy and subjected to forced labour in a military camp under the command of Papy Germain. The hostages were sold and bought back by their families. Women and girls were raped and forced to live as sex slaves with the army in Kpandruma. Parish buildings, the health centre, the administrative offices and the hydroelectric power plant in Nioka were attacked and destroyed. On 6 July 2003, the villages of Zengu, Ambe, Pabong and Akusi were again attacked by FNI militia, who massacred more than 100 people and looted and burned down more than 1,800 houses. In July 2003, the Armée populaire du Congo and the Force populaire pour la démocratie au Congo were in the region.

40. On 19 and 31 July 2003, Fataki, the main town in the territory of Djugu, was at the centre of several attacks carried out by members of the FAPC and the FNI. On 19 July, about 30 people were killed, 51 were reported disappeared and a large number were listed as displaced. Numerous buildings, including the church complex, two convents, the orphanage, the hospital and the schools, were destroyed and burned down. Another, even more serious attack took place on 31 July, causing

the population of Fataki to flee. According to the governor of Fataki, with whom the Special Rapporteur had an interview during her visit, over 10,000 people were displaced from Fataki. According to the testimony of those who had escaped, a large number of civilians, including women and children, had been taken hostage and forced into slavery, including sexual slavery, in the towns of Ali-D'A (Dhera), Kpakala (Dyambu), Bon Marche (Tsupu-Libi) and Maskini (Djugu).

41. On 15 July 2003, Lendu and Ngiti militias attacked the town of Tchomia, on the shores of Lake Albert. The militias (consisting mostly of children) killed more than 80 people. About 200 houses were destroyed. The attack followed on that of 31 May 2003, when the same militias and the inhabitants of the towns of Zumbe and Loga deliberately attacked Tchomia Hospital, killing 34 people.

42. On 20 July 2003, the same Lendu and Ngiti militias massacred 22 civilians at Nizi, most of them women and children. The bodies retrieved by MONUC had been mutilated and cut in pieces with knives and machetes; the internal organs and genitals had been removed.

43. The attacks are extremely vicious. The militias use such weapons as machetes, axes and darts, as well as firearms such as Kalashnikovs. Often different weapons are used simultaneously. Acts of cannibalism are often performed in front of the victim's relatives. Victims are cut up in pieces or burnt alive. Attacks are systematically accompanied by looting of property and burning down of houses.

44. The humanitarian consequences of the armed conflict have been disastrous. According to the Office for the Coordination of Humanitarian Affairs, there are between 500,000 and 600,000 displaced persons scattered throughout the region. The report states that, of the region's estimated 400 health centres, 212 have been closed, and about 200 schools have been destroyed.

C. North Kivu and South Kivu

45. The security situation in North and South Kivu remains extremely worrying. It is characterized by clashes between RCD/Goma troops and Mai-Mai combatants and between FDD troops and the Interahamwe. The insecurity felt by the civilian population, which is recognized by the authorities, is due to the presence of various armed groups that engage in summary executions, torture, rape and looting of property. Humanitarian organizations have difficulty in reaching the populations affected by these acts of violence.

46. South Kivu province has been the scene of battles between the M40 and the Armée nationale du Congo (ANC). These battles have caused the death of about 10 people, including civilians, and brought about the displacement of numerous others. On 25 April 2003, battles also took place in Uvira between the ANC and the Mai-Mai, under Patrick Masunzu, leading to the death of 53 people, including 5 civilians, 3 of whom were children; 17 people were wounded.

47. Between 10 and 12 April and between 20 and 21 April 2003, violent clashes took place between the Mai-Mai and the ANC on the Ruzizi plain in Uvira and Fizi territory. According to information received by the Special Rapporteur, the provisional toll is 23 dead and at least 17 wounded, who were taken to hospitals in Uvira.

48. Summary executions took place in June 2003 in Alibango, Kanyabayonga, Lubero, Uvira and Fizi. Between 24 and 27 June, 16 people were executed by RCD/Goma soldiers. Several summary executions in Uvira were the work of the military authorities of the Ninth Brigade under the command of Jean-Pierre Mutebuzi.

49. The Local Defence Unit, a paramilitary group formed by Governor Seroufouli, which is responsible for numerous acts of violence, is still active. Yet again, the victims of extrajudicial executions have been members of humanitarian organizations.

50. In Kinshasa, the Special Rapporteur was witness to harmonious cooperation between members of the various political groupings, but the situation seems quite different among the local leaders in Kivu. Some NGOs told the Special Rapporteur that they fear a renewal of the conflict.

51. At the end of March 2003, in Lubero, which was recaptured by the RCD/Goma at that time General Matabishi withdrew from the RCD-K/ML with some former members of RCD-K/ML and RCD/N to form a dissident liberation movement, the RCD-K/ML/KIS. He appears to have forcibly recruited children in Masereka, Pikese, Museda, Kikundo and the left bank of Lake Albert.

D. Katanga

52. The Special Rapporteur has received information concerning mass human rights violations, beatings and killings by armed groups, looting and the burning of villages in the areas least accessible to humanitarian organizations, such as North Katanga. She intends to travel to the area during her next visit.

E. Impunity and reconciliation

53. Impunity and reconciliation are often presented as two contradictory objectives, but history shows that no lasting peace can be built on impunity.

54. On 15 April 2003, President Joseph Kabila issued a provisional amnesty in anticipation of a law to be adopted by the National Assembly to amnesty acts of war, political offences and crimes of opinion committed during the period from 2 August 1998 to 4 April 2003 but not war crimes, the crime of genocide and crimes against humanity. It is essential that the National Assembly should retain these exceptions.

55. The Special Rapporteur considers that, under international customary law, the Democratic Republic of the Congo has an obligation to deliver up to justice the perpetrators of genocide, crimes against humanity and war crimes, at least where those crimes were committed on national territory by Congolese citizens. Since July 2002, when the Rome Statute of the International Criminal Court came into force, this has become a treaty obligation for the Democratic Republic of the Congo.

56. The Special Rapporteur welcomes the decision by the Prosecutor of the International Criminal Court to make the Democratic Republic of the Congo the first State to be the subject of his investigations. Since the war in the Democratic Republic of the Congo has long become a forgotten war, this decision will ensure that justice is done in the most murderous international conflict since the Second

World War. The Special Rapporteur believes that close cooperation with the Prosecutor of the Court is essential.

57. The Special Rapporteur remains convinced that a judicial mechanism should also be set up to cover the period before July 2002. To that end, the commission of inquiry or experts proposed by the late High Commissioner, Sergio Vieira de Mello and several NGOs and endorsed by the Commission on Human Rights should be established.

58. In this context, the role of Congolese justice remains important. It should be emphasized that one of the basic principles of the Rome Statute of the International Criminal Court is that of complementarity, as provided for in article 17.

59. The Special Rapporteur emphasizes that, despite clear representations by several international bodies, including the Security Council and the Commission on Human Rights, individuals involved in mass human rights violations have been appointed to the Government.

60. No inquiry has been held into the military officers named in the report of the High Commissioner for Human Rights, who are guilty of serious violations of international humanitarian law and human rights during the Kisangani massacres in May 2002 (see also document E/CN.4/2003/43). Moreover, two of them, Laurent Nkunda and Gabriel Amisi (Tangofor), have been promoted in the new national army by presidential decree. The presidential decree is beginning to be implemented in Kinshasa, but regrettably in a selective and discriminatory manner.

61. Under the Pretoria Agreement and the provisions of the Transitional Constitution, a truth and reconciliation commission should be set up within a month. The Special Rapporteur considers that, given that the constitutional transition period is very short and in view of the need for both careful thought and consultation with civil society, it would be preferable to begin by adopting a framework-law on the truth and reconciliation commission.

62. The Special Rapporteur has confidence in the reconciliation process in the Democratic Republic of the Congo. She notes that, although the country has been scarred by atrocities, it possesses exceptional moral resources, determination and personalities. She would favour local reconciliation solutions, coming from people who know the country's traditions and customs. In Ituri, for example, she was deeply impressed by the way in which Pétronille Vaweka, Chairwoman of the Interim Special Assembly, envisages such a reconciliation.

IV. Situation of refugees and war-displaced persons

63. War has been raging in the Democratic Republic of the Congo since 1997, leading to an internal humanitarian crisis exacerbated by the presence of large numbers of refugees from the subregion.

64. In this context, the adoption of legislative measures concerning the status of refugees in the Democratic Republic of the Congo is to be welcomed. Following the adoption of Act No. 21 in October 2002, a national commission for refugees and an appeals commission were established by Decree No. 3/014 of 5 August 2003.

65. The number of displaced persons is estimated at more than 2.7 million. The situation continues to deteriorate owing to population movements caused by the

recent events in Ituri and Kivu. Insecurity, combined with the dispersal of the displaced persons, makes it difficult to manage the phenomenon in the various sites identified across the Democratic Republic of the Congo. The largest numbers of displaced persons are to be found in North Kivu, South Kivu and Katanga provinces and in the city of Kinshasa.

66. According to estimates by human rights defence organizations, the conflict in Ituri has displaced about 500,000 persons. Twelve thousand persons have gathered in Bunia, near the airport, and about 20,000 have fled towards Beni, 200 kilometres south. According to information received by the Special Rapporteur, in the district of Bundibugyo, west of Uganda, several persons perished while crossing Lake Albert.

67. In Bunia, the Special Rapporteur found that, despite the efforts of non-governmental organizations and the Office for the Coordination of Humanitarian Affairs, the situation of displaced persons in the camps is poor. Several human rights, including the right of children to education, are not respected. She welcomed the decision by the competent authorities not to allow the establishment of camps consisting of a single ethnicity.

68. In Kivu, notably in Kisangani, Isiro, Lieke-Lesole, Punia, Watsa and Wamba, there are between 15,000 and 20,000 displaced persons, the majority of them from Ituri. The displaced persons are still traumatized and are sometimes afraid to give their identities. The non-governmental organizations responsible for these persons are experiencing great difficulties in meeting their needs. Owing to the difficulties in gaining access to the various localities, there are no statistical data on displaced persons in the northern districts of Haut-Uele and Bas-Uele.

V. Administration of justice

A. Rehabilitation of the justice system

69. The rehabilitation of the justice system in the Democratic Republic of the Congo remains a priority. The Special Rapporteur welcomes the programmes established by the European Union with a view to contributing significantly to the enhancement of the judicial system. The court in Bunia, Ituri, has not been operational since May 2003, the judges having fled following the ethnic clashes.

70. With regard to the administration of justice, the Special Rapporteur is aware of abuses committed by the bodies responsible for preliminary investigations in criminal proceedings, including security and intelligence officers.

71. Several human rights activists and journalists have been the victims of abuses committed by officers of the RCD/Goma Department of Security and Intelligence (DSR). For example, Joseph Nkinzo, director of Radio Sauti Ya Rehema in Bukavu, was arrested and tortured on 28 May 2003 by the Bukavu DSR. Journalists are constantly being threatened by its officers.

72. Numerous human rights activists have been threatened, arrested and tortured. At the beginning of the year, Didiace Kaningini Kyoto, chairman of the Civil Society Coordination Office of South Kivu, was attacked at his home by armed men close to RCD/Goma. Pascal Kabunlungu, a member of the NGO Héritiers de la

justice based in Bukavu, was threatened with death by Commander Llunga of RCD/Goma. On the same night, armed men went to the home of Betu Kajigi, also a member of Héritiers de la justice. Kisangani Donatien, a member of Solidarité échange pour le développement intégral (SEDI), a human rights NGO based in Uvira, South Kivu, was arrested and detained at the Uvira Military Prosecutor's Department (*Auditorat militaire*) on the pretext that he was an agent of an organization collaborating with the Mai-Mai.

73. In April-May 2003, 16 members of the former Forces armées zaïroises (ex-FAZ), the special presidential division (DSP) and the civil guard (GACI), mostly natives of Équateur province, were abducted by officers of the Military Detection of Unpatriotic Activities Police (DEMIAP), imprisoned in the so-called "Ouagadougou" punishment cells (*cachots*) and subsequently transferred to the prison in Buluo, Katanga, without having been heard.

74. The Special Rapporteur is of the view that, within the framework of the rehabilitation of the justice system, a complete overhaul of the modus operandi of the State security agencies must be envisaged.

B. Situation in prisons and detention centres

75. The Special Rapporteur was able to observe the difficult conditions of detention and the numerous irregularities committed in the country's prisons and detention centres.

76. The Special Rapporteur found that the persons convicted at the conclusion of the trial of the presumed assassins of President Kabila and held in cell block 1 are not allowed any visits, receive food from their families once a week and are guarded by the special presidential guard.

77. According to information communicated to the Special Rapporteur, some persons are being held in inhuman conditions in certain punishment cells (*cachots*) (DEMIAP punishment cells) and prisons (Buluo prison). It is claimed that they are being held in solitary confinement, without access to fresh air. Some prisoners are allegedly subjected to torture or ill-treatment.

78. The Special Rapporteur was informed of cases of harassment, abuse of power and non-respect of human rights by prison services officers. Also, the Special Rapporteur notes that most criminal investigation officers are ignorant of the established procedures (the periods of pre-trial detention are greatly exceeded). In Masiri and Goma, it is the military authorities that are running the detention centres and prisons, which are in fact under the jurisdiction of the police. This practice is leading to numerous arbitrary or illegal arrests of civilians. The civilian judicial authorities have no authority over the military punishment cells (*cachots*) and prisons.

79. According to information received by the Special Rapporteur, in Kitshanga, capital of the Bashali tribal area of the administrative district of Masisi (North Kivu province), there is a punishment cell (*cachot*) where the prisoners are fed almost nothing and are not allowed to receive any visits (from either their relatives or their doctors). It is alleged that they are tortured by prison services officers. They have never appeared before a competent judge.

80. The information submitted to the Special Rapporteur refers to poor conditions of detention in prisons and punishment cells (*cachots*) in Rutchuru and Sake. On the administrative side, none of the punishment cells (*cachots*) has a properly maintained, numbered custody register initialled by prosecutors. The responsibilities of the persons in charge of the punishment cells (*cachots*) are not clearly defined. On the legal side, the procedure for remand in custody is not respected. Several persons are being held for civil offences. The principle of individual criminal responsibility is not respected in some cases. The legal period of detention in police custody is being exceeded in several instances. Minors are held with adults. Civilians are held with members of the armed forces. Sometimes, women are held with men. Ill-treatment is the norm and several cases of torture and extortion have been reported.

81. In Kisangani, the main prison is in a dilapidated state such that security can no longer be guaranteed. In Bunia, the prison has ceased to operate. It is essential for the restoration of peace in Ituri for the Bunia prison to be rebuilt as soon as possible.

C. Military justice

82. The abolition of the Military Court on 24 April 2003 was followed by the gradual establishment of new military institutions. The Code of Military Justice and the Military Penal Code entered into force on 25 March 2003. The Special Rapporteur had the opportunity to visit the Military Prosecutor's Department (*Auditorat militaire*), which replaced the prosecution service of the Military Court, and to see the efforts of the new authorities to comply with the new legislative provisions and overcome the heavy legacy of the past.

83. The War Council operating in the other districts must comply with the judicial reform measures. The preamble of the Code of Military Justice itself refers to the concept of the "war council": this concept is closer to the idea of terror than that of justice.

84. The Special Rapporteur followed the proceedings instituted by the authorities in the wake of the mass human rights violations in Kisangani in May 2002 and Mambasa in December 2002. In her report to the Commission on Human Rights (E/CN.4/2003/43), the Special Rapporteur qualified these proceedings as "show trials". The outcome of these trials, which was derisory to say the least, demonstrates the total impunity of persons who have committed mass human rights violations.

85. In Kisangani, the persons convicted in connection with the events of May 2002 are no longer in prison. The military judicial authorities continue to claim that they are not aware of the very comprehensive reports drawn up by United Nations bodies and NGOs.

86. In Gbadolite, 18 to 20 persons accused of serious violations committed in Ituri, who had been convicted by the garrison War Council in February 2003, appealed their sentences before the Higher War Council. The Higher War Council hearings were held from 26-28 March 2003 in Gbadolite. The Council acquitted six of those convicted. In addition, it upheld the conviction of one person sentenced to life imprisonment and reduced the sentence of another sentenced to 12 months' penal servitude by six months.

87. In neither case, particularly that of the trials instituted following the mass human rights violations in Kisangani and Mambasa, were the proceedings conducted independently, flouting the obligation to bring the culprits to justice.

VI. Situation of vulnerable groups

A. Children

1. Children associated with armed groups

88. Progress has been made in the legislative area. The Transitional Constitution prohibits the recruitment of children under 18 years of age to the police and the armed forces. Similarly, the Military Code which entered into force in April 2003 prohibits legal proceedings against children under 18 years of age. Labour legislation includes provisions protecting children.

89. The recruitment and use of children by the various groups involved in the conflict in the Democratic Republic of the Congo continue, despite appeals and official demobilization campaigns, as has been shown by the events which occurred in the Ituri district, in particular at Bunia. It is estimated that 30 to 40 per cent of the military personnel used by the armed groups are children.

90. All the armed groups present in the territory of the Democratic Republic of the Congo include children, including a large number of girls, among their troops.

91. Following the presidential amnesty of 14 April 2003, Jean-Louis Basy, sentenced in July 1999 for involuntary homicide, and Diavanga Nkuyu, sentenced in May 1999 for associating with criminals, both of whom were condemned to death and were imprisoned at Kinshasa since 2000, were released on 10 May 2003.

92. In South Kivu, in particular at Uvira, child soldiers have been summarily executed by officers of RCD. On 26 May 2003, Papy Bizimana, a minor, was publicly executed by shooting on land belonging to Mr. Katambayi, on the orders of Commandant Gaston of Bureau 2.

93. Several non-governmental organizations have informed the Special Rapporteur that RCD is currently recruiting children at Idwji. The children are then sent to the training centre at Kihumba.

94. It appears from discussions which the Special Rapporteur has had with former child soldiers that they are demobilized when the militia are no longer capable of feeding the children.

2. Street children

95. According to information communicated to the Special Rapporteur, the number of street children varies between 20,000 and 25,000. These children are mainly war refugees, orphans and "child sorcerers" who engage in a lucrative activity and who, at the end of the day, return to their families. Once demobilized, the children are without any supervision and are in practice left to themselves. This lack of supervision has resulted in most of these children drifting into crime, vandalism, vagrancy, begging, theft and prostitution.

96. Street children are often victims of abuse by the police. In May 2003, at Mbuji Mayi, approximately 20 street children were subjected to cruel, inhuman and degrading treatment by the police. They were held in unhealthy conditions in the prison at Mbuji Mayi.

97. The Special Rapporteur welcomes the steps taken to improve the situation of street children, such as those taken by Save the Children and its 15 national partners and by the Ministry of Social Affairs.

3. "Child sorcerers"

98. The phenomenon of "child sorcerers" has spread in some African countries, including the Democratic Republic of the Congo. These children are sometimes regarded by their parents and relatives as having mystical powers. They are removed from their families and marginalized by society. Sometimes, the parents accuse their children of being sorcerers in order to abandon them because of economic difficulties. They are frequently victims of abuse and ill-treatment. Often the "Eglises de réveil" (revivalist churches) are involved in the maintenance of this belief, which is very harmful to children.

99. The Special Rapporteur is alarmed at the extent of the phenomenon and of its consequences. In the commune of Mont Ngafala, for instance, a young boy, 11 years old, who was regarded as a sorcerer died on 27 June 2003 after suffering ill-treatment and burns on his body some days earlier. Those responsible are said to have accused the young Nsumbu of being a sorcerer following the death of a member of their family. The young boy was detained by the police while the aggressors were not questioned at all.

100. The provisions of the Convention on the Rights of the Child, which was ratified by the Democratic Republic of the Congo, may be invoked to defend the rights of "child sorcerers". For example, according to article 37 (a) of the Convention, no child shall be subjected to torture, cruel treatment or punishment, arrest or unlawful detention.

B. Women

101. The Special Rapporteur is gratified that some provisions relating to the protection of women are mentioned in the Constitution. At the same time, she noted that the participation of women in all the transitional institutions is very limited.

102. Violence against women, in particular sexual violence by armed groups, has become a common practice. Women have been abducted by armed men, held in detention and reduced to sexual slavery, raped, and forced to do domestic work and to submit to forced marriages with members of various factions.

103. Approximately 50 women were illegally confined and raped at Kanyola on 13 June 2003. In the past six months, 66 women in the village of Izege, near Walungu, were abducted and raped. Sisters from the Convent of the Little Sisters of the Représentation de Luoto in Lubero were raped by five soldiers of RCD/Goma during the sacking of the village between 27 and 29 June 2003.

104. One welcome development is that the United Nations organizations represented in the Democratic Republic of the Congo, including the United Nations

Development Fund for Women (UNIFEM), which has just appointed an expert, have decided to launch a joint initiative to combat sexual violence (a project document is being prepared).

105. Non-governmental organizations have mobilized to defend the rights of women in armed conflicts. At Bukuvu, the very suggestive slogan of the campaign launched by Rayon d'action femmes (RAF) — "To rape a woman is to rape one's mother" — was very visible in the town. At Bunia, the positive effects of the activities of Cooperazione Internazionale (COOPI) and the national non-governmental organizations were noted by the Special Rapporteur.

106. Unfortunately, despite the international community's awareness of the extent of violence against women in the Democratic Republic of the Congo, very limited resources have been made available to NGOs.

C. Indigenous peoples

107. Indigenous peoples continue to be subjected to large-scale acts of discrimination by the majority of the population. They are among the first victims of mass violations of human rights.

VII. Conclusions and recommendations

108. **All the parties to the conflict should:**

(a) **Put an end to all military activities, including support for the armed groups which are their allies;**

(b) **Respect the obligations relating to the implementation of the Transitional Constitution;**

(c) **Respect the rights of women and take special measures to protect women and children who are victims of sexual violence;**

(d) **Immediately cease recruiting and using children in violation of international law and provide information on the measures taken to put an end to such practices;**

(e) **Prevent a situation arising which might create population movements, including flows of refugees and displaced persons, and take all necessary measures to create conditions for the voluntary return of all refugees and displaced persons;**

(f) **Ensure the security and freedom of movement of the staff of the United Nations and guarantee the unhindered access of humanitarian personnel to the affected populations.**

109. **The Government of the Democratic Republic of the Congo should:**

(a) **Implement the Constitution and create the necessary conditions for a real democratic process;**

(b) **Comply with all the obligations incumbent on it under the international instruments relating to human rights and, to that end, continue to**

cooperate with the mechanisms for the protection of human rights, including the human rights field office in the Democratic Republic of the Congo;

(c) Take all necessary measures to eliminate the climate of impunity, in particular by pursuing the reform of justice and making it effective;

(d) Strengthen the operational capacity of the Interim Human Rights Monitoring Centre at Ituri;

(e) Cooperate with the International Criminal Court and with the International Criminal Tribunal for Rwanda;

(f) Take the necessary measures to ensure the effective application of the amnesty decree of 15 April 2003, except with regard to the crime of genocide, war crimes and crimes against humanity;

(g) Continue to reform justice, including military justice, and take steps to abolish the War Council and review the cases tried by that Council and by military courts, including the trials of persons accused of being involved in the assassination of the former President of the Democratic Republic of the Congo;

(h) Close the unauthorized detention centres;

(i) Reinstate the moratorium on the death penalty and gradually abolish capital punishment;

(j) Take all necessary measures to protect children.